

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

<p>Order Instituting Rulemaking on the Commission's Own Motion to Establish Consumer Rights and Consumer Protection Rules Applicable to All Telecommunications Utilities</p> <p>Consumer Protection Initiative, Language Access Issues</p>	<p>Rulemaking 00-02-004</p>
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**THE CONSUMER FEDERATION OF CALIFORNIA'S COMMENTS ON THE CPUC
STAFF'S DRAFT REPORT:
CHALLENGES FACING CONSUMERS WITH LIMITED ENGLISH SKILLS IN THE
RAPIDLY CHANGING TELECOMMUNICATIONS MARKETPLACE**

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The Consumer Federation of California (“CFC”) submits the following comments on the California Public Utilities Commission Staff’s “Draft Report: Challenges Facing Consumers With Limited English Skills In The Rapidly Changing Telecommunications Marketplace” (“Draft Report”), circulated August 21, 2006.

BACKGROUND

In 2000, the California Public Utility Commission joined several other Commissions around the country in proposing a Consumers Bill of Rights.¹ The

¹ D.04-05-057 (June 7, 2004) at 9.

Commission initiated a rulemaking proceeding (R.00-02-004) because rules were needed:

In a perfect world, all telecommunications carriers would operate honorably and never seek unfair advantage at the expense of their residential and business customers. Unfortunately, perfection in competition and conduct remains only an ideal. In the meantime, it is the Commission's responsibility to enact clear and concise rules to guide industry conduct. In the long run, such rules will benefit consumers, carriers and the general public alike.²

No statute or provision of the California Constitution has been adopted since then to change the Commission's responsibilities. People with only a limited grasp of the English language continue to need protection from the abusive marketing practices which are taking place within the telecommunications industry.

There is no reason for further study of the situation. (Report at 66). A great deal of time and effort went into the adoption of rules to implement the Consumers' Bill of Rights. Extensive resources were devoted to that project by both Commission staff, telecommunications carriers and intervenors³ in the preparation of reports and comments, and participation in workshops and hearings in connection with the Commission's adoption of the Bill of Rights.

The Draft Report summarizes all the efforts undertaken to educate consumers: The ULTS Marketing Program by Richard Heath and Associates to reach populations in English, Spanish, and Asian language-specific markets(Draft Report at 33); the survey by the California Utilities Diversity Council in 2005 (Draft Report at 35); the survey by the Commission's Bilingual Services Office in 2001-02 and 2003-04 (Draft Report at

² *Id.* at 3.

³ Nearly a million dollars was awarded in intervenor compensation. Decision 04-12-054 (Dec. 16, 2004); D. 05-02-017 (Feb. 10, 2005); D.06-06-008 (June 15, 2006).

39); the Telecommunications Trust Fund (\$16.5 million), which is funding “over 180 projects targeted at consumer telecommunication education” and plans to spend \$3 million per year over the next 5 years (Draft Report at 42-43); the \$33 million Caller ID Consumer Education Program which reached 6,109,036 hard-to-reach consumers and domestic violence victims (Draft Report at 45); the \$25 million Community Collaborative Agreement funded through conditions placed on the Bell Atlantic/GTE merger (Draft Report at 47); the Telecommunications Consumer Protection Fund which targeted ethnic and local media to educate consumers and link grassroots organizations (Draft Report at 48).

Despite all of these efforts to empower consumers, fraud and unfair business practices continue to prosper in the telecommunications market. (Draft Report at vii). In its March 2006 order, the Commission stated it would “address in-language issues” and, if recommended, “require telecommunications carriers to abide by new in-language rules.” (D.06-03-013 at 141). The staff’s recommended actions -- “review” educational materials, identify more languages that people speak, “facilitate forums,” and wait for people to complain before doing anything --- are insufficient. Stronger and more immediate action is required.

The Draft Report provides excellent suggestions for actions to be taken by the Commission which could be immediately implemented.

1. The Commission Should Require Compliance with its Prior Decisions.

The Staff reports that a prior decision by the Commission, D.96-10-076, “requires Competitive Local Exchange Carriers (CLECs) and large incumbent Local Exchange Carriers (ILECs) to provide specific information to customers in specific languages if

they market services in those languages.” (Report at 56). That decision required CLECs and ILECs to explain the customer’s bill in the language in which they sell their services. The Commission discussed in D.96-10-076 its prior decisions incorporating a similar requirement:

In D.95-07-054, the Commission adopted initial interim rules for the provision of local exchange service by competitive local carriers (CLCs). Among other things, D.95-07-054 required CLCs to provide the requisite confirmation letter "in a language other than English if the sale was made in another language." (Appendix B, Rule 2.) In D.96-02-072, the Commission expanded the multilingual requirements for CLCs. n2 Specifically, CLCs were required to provide a confirmation letter to the customer in the language in which the sale was made, explaining the services ordered and the resulting charges. CLCs were also obligated to provide, on an ongoing basis, all billing and notices in the language in which the customer's order was initially taken. (D.96-02-072, mimeo. Appendix E, p. 10, Rule 4(F)(16).) The discussion of this requirement at p. 80 of D.95-12-056, mimeo., states that billing and future notices must be in the language in which the service was sold for as long as the person remains a customer.

69 CPUC2d 65, 1996 Cal. PUC LEXIS 1056 (Cal. PUC 1996).

The Commission’s existing rules should be enforced and companies subject to the Commission’s rules who fail to provide required information should be investigated and prosecuted.

2. The Commission Should Exercise Its Enforcement Power To Stop Illegal Practices.

The Draft Report states that the Utility Enforcement Branch [UEB] of the Consumer Protection and Safety Division investigates carrier practices and “has a variety of administrative, criminal and civil remedies to address these problems.” (Report at 50). The UEB may ask the Commission to open a formal investigation and impose fines or order restitution, and the UEB may provide evidence to local

prosecutors or the California Attorney General's Office and recommend "criminal or civil prosecution in the appropriate California courts." (Report at 51). The UEB has already discovered "slamming and cramming by specific telecommunications companies have involved many Limited English Proficient (LEP) complainants":

Several of the language related cases identified by enforcement staff have similar characteristics: multiple slamming complaints against a particular company, with many reported by LEP consumers, and many of the required Third Party Verification recordings in languages other than English.

(Draft Report at 52). There is good cause to begin gathering evidence to support the prosecution of entities engaged in abusive practices.

As more fully set forth in CFC's previous comments:

- There is reliable evidence that communities of people with limited proficiency in speaking English are being defrauded by telephone companies subject to the Commission's jurisdiction and their agents.
- Telecommunications businesses have contractual power to control the discriminatory and abusive business practices of their agents and the Commission has the authority to require telecommunications businesses, by rule, to exercise their contractual power to eliminate misconduct by their agents.
- The equal protection provisions of the U.S. and California Constitutions prohibit the state and telecommunications companies regulated by the Commission, from arbitrarily discriminating against any class of individuals, including people living in the U.S. who do not speak English fluently.

P.U. Code section 2101 requires the Commission to "see that the provisions of the Constitution and statutes of this State affecting public utilities are enforced and obeyed, and that violations thereof are promptly prosecuted" P.U. Code section 2889.9(a) extends that duty to nonpublic utilities which use the telephone company to bill services sold to the consumer,

and section 2889.9(c) specifically grants the Commission authority to order the billing company to terminate its business relationship with the offending company. The Commission should exercise its power to stop illegal discrimination, fraud and other unfair business practices.

3. The Commission Should Adopt a Rule Making Carriers Responsible for the Acts of Their Agents.

The Draft Report states that telecommunications companies claim that offering information in a language other than English would not be cost-effective, but the claims were “difficult to evaluate at this time because companies have not provided cost data in support of their claims,” (Report at 58). Staff does not explain why that information was withheld. See e.g., P.U. Code §§ 312 – 314.5. In the absence of any evidence justifying a conclusion different than was made in 1996 (i.e. that it is cost-effective to provide consumers with information in the language in which a product is sold), the Commission should initiate a rulemaking to require distribution of essential information to consumers.

So long as key terms and conditions of the sale of a telecommunications service are provided only in English, customers with limited English proficiency are effectively foreclosed from understanding their contractual rights and remedies. See, *Lau v. Nichols*, 414 U.S. 563, 566 (U.S. 1974). The Commission has recognized that: “*Disclosure* is ... key to safeguarding other rights”.⁴ “Consumers have a right to receive clear and complete information about rates, terms and conditions for available products and services, and to be charged only according to the rates, terms and

⁴ Rule No. 1 in the proposed Consumers’ Bill of Rights, *Right to Disclosure*. *Id.* at 27

conditions they have agreed to.”⁵

The Commission has the authority to “adopt rules, regulations and issue decisions and orders, as necessary to safeguard the rights of consumers.” P.U. Code § 2889.9(i). The Commission was directed by the legislature to “require telephone corporations to provide consumers with “[s]ufficient information upon which to make informed choices among telecommunications services and providers,” including “the provider’s identity, service options, pricing and terms and conditions of service.” P.U. Code § 2896(a).⁶

Other state commissions have developed protections for consumers with limited English proficiency. For example, Texas requires that its consumers be provided with “information in English and Spanish and any other language as the commission deems necessary concerning rates, key terms and conditions Texas Util. Code § 17.004. Arizona requires that an independent third party verifying a change in service providers must “conduct the verification in the same language as was used in the initial sales transaction.” Arizona R.14-2-1905(F)(6) (AT&T proposed language which would require notification to be “in the language the carrier has chosen to use in marketing to the Subscriber.”) DOCKET NO. RT-00000J-99-0034.

CFC has drafted a proposed rule which addresses the concern expressed herein. The proposed rule is attached as Appendix A.

⁵ *Id.* at App. A, at p. 2.

⁶ The same statute directs the Commission to require telephone corporations to provide their customers with “information concerning the regulatory process and how customers can participate in that process, including the process of resolving complaints.” P.U. Code § 2896(d). It is unclear why the Commission would deputize CBOs to perform a function which telephone corporations are statutorily mandated to perform. See Draft Report at iv, 70.

4. Informational Materials.

In response to the Commission's directive that federal and state agencies be canvassed for information regarding how they provide information and services in foreign languages (D.06-03-013 at 140), the Staff found the "[f]ederal LEP Web site" which "provides specific ideas for improving service to LEP persons in various types of work." (Report at 25) For example, a pamphlet created by the Federal Interagency Working Group on Limited English Proficiency is published on that site with a "template that can be used by all agencies. The pamphlet, "Know Your Rights", explains consumers' rights to be free from discrimination on grounds of national origin. "A more detailed review of the information available on or through this site could provide strategies for improving communication with LEP individuals and populations." (Staff Report at 25). That 'detailed review' should be undertaken immediately, and strategies which can be immediately implemented, like publication of "Know Your Rights," should be immediately implemented.

DRA has pointed out that it would also be possible to inexpensively adapt to the telecom industry a guide it developed in 1998 – 2001, pursuant to legislative mandate in SB 477 [P.U. Code Sec. 392.1(c)], to help consumers evaluate competing electric service offers.

To address the needs of LEP consumers, the Shopper's Guide was produced in eight languages other than English—Spanish, Chinese, Tagalog, Japanese, Korean, Thai, Hmong and Vietnamese. A contractor, U.C. Language Services, was engaged for the translation service at a cost of about \$900 - \$1,000 per language for the entire document. The document was disseminated in a variety of ways, including DRA's website, the Electric Education Trust (Consumer Services Division's education program) via a multitude of CBOs, legislative offices outreach, press releases and mailings on demand.

DRA Comments filed July 17, 2006, at 2. Adaptation of the "Shopper's Guide for Residential and Small Commercial Customers" should begin immediately.

CONCLUSION

The Consumer Federation of California asks the Commission to take decisive action to end the discrimination which is now occurring in the telecommunications marketplace. Extensive funds have been spent to empower consumers with limited English language skills, but they cannot tackle the telecommunications industry on their own. That is the Commission's responsibility.

CFC asks the Commission to take action to stop the abuses in the market place through enforcement actions. CFC also asks the Commission to "enact clear and concise rules to guide industry conduct." A proposed rule which prescribes information to be translated and made available to LEP consumers is attached. The rule would also hold telecommunications companies responsible for the actions of their agents.

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Respectfully submitted,

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